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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,967	10/10/2003	Sheri Lynn Baker	CFLAY.00197	1851

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CARSTENS YEE & CAHOON, LLP
P O BOX 802334
DALLAS, TX 75380

EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/683,967

Applicant(s)

BAKER ET AL.

Examiner

Sarah L. Kuhns

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 7-16 and 27-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 17-26 and 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Applicant's election of claims 1-6, 17-25, and 43 in the reply filed on April 29, 2005, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 43 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, does not provide support for the newly added limitation, namely, the exclusion of added oil, seasoning, or preservatives.

Claim Rejections - 35 USC § 102

Claims 26 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by "Salmon Patties" for the reasons set forth in the previous office action.

Claim Rejections - 35 USC § 103

Claims 1, 4, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Salmon Patties" in view of Ellis for the reasons set forth in the previous office action.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Salmon Patties" in view of Ellis in further view of "A Dinner Experiment" and "Dried Food Products" for the reasons set forth in the previous office action.

Claims 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Food Product Design" in view of "Salmon Patties" and Ellis for the reasons set forth in the previous office action.

Response to Arguments

Applicant's arguments, filed April 29, 2005, with respect to the rejection of claim 1 under 35 U.S.C. §112 have been fully considered and are persuasive. The §112 rejection of claim 1 has been withdrawn.

Applicant's other arguments have been fully considered but they are not persuasive.

Applicant argues that claims 26 and 43 are not anticipated by "Salmon Patties" because "a natural oil content ranging from about 2.0% to 5.0% by weight is required. However, the Examiner submits that this property is inherent, as the same natural source of oil, i.e. the corn, is used in both the additive of the prior art and that claimed by Applicant. The claim language does not exclude the addition of more oil in claim 26. In claim 43, the claim language does recite the exclusion of additional oil, as well as seasoning and preservatives.

Applicant argues that the corn chips of "Salmon Patties" are fried and extruded with an oil content of approximately 30%. However, as stated above, it is inherent that the natural oil content of the chips falls within the claimed range. Also, the claim language does not exclude fried and extruded chips. Additionally, Ellis discloses corn chips wherein the oil content is 2-30% by weight (column 2, lines 34-39). Therefore, Ellis does not teach away from the claimed invention, and it would have been obvious to use the corn chips of Ellis in the manner suggested by "Salmon Patties" because it would have been expected that any corn chips would suffice.

In response to Applicant's arguments, concerning claims 2 and 3, against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). "Salmon Patties" has been discussed above. "A Dinner Experiment" was relied on to demonstrate that it was known to chop corn chips until fine in a food processor and "Dried Food Products" was relied on to demonstrate

Art Unit: 1761

that the particle size claimed by Applicant was a common size for food additives.

Therefore it would have been obvious to grind corn chips until the claimed size was reached since such a size was established in the art as being appropriate for food additives.

In regard to Applicant's arguments concerning claim 4, the examples provided do not establish that the specific chips of the prior art do not have the claimed properties.

Applicant argues that it would not have been obvious to combine and/modify the teachings of "Food Product Design," "Salmon Patties," and Ellis to arrive at Applicants' claimed method for making a toasted corn flavor additive. However, as stated above, there is no requirement in the claim language excluding the use of additional oil; the claim only requires that the natural oil content be 2.0-5.0%, which is an inherent property in the food additives of the prior art.

Response to Amendment

The affidavit under 37 CFR 1.132 filed April 29, 2005, is insufficient to overcome the rejection of claims 1-6, 17-25, and 43, based upon the prior art rejections set forth in the last Office action because it is a restatement of Applicant's arguments which have been addressed above. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Conclusion

Art Unit: 1761

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

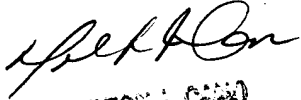
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700